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DEWAN UNDANGAN NEGERI SELANGOR & ORS v. MOHD HAFARIZAM HARUN

FEDERAL COURT, PUTRAJAYA
ZULKEFLI AHMAD MAKINUDIN CJ (MALAYA)
SURIYADI HALIM OMAR FCJ
B HASAN LAH FCJ
ZAINUN ALI FCJ
AZIAH ALI FCJ
[CIVIL APPEAL NO: 02-83-11-2014 (B)]
14 JULY 2016

C

CONSTITUTIONAL LAW: *Legislature – State Legislative Assembly – Secretary of the Committee of Rights and Privileges ('Secretary') issued summons against solicitor for issuance of letter of demand against Speaker of Assembly – Letter of demand contained indecent and threatening words – Contempt of Assembly –*
D *Allegation against – Solicitor filed suit against State Legislative Assembly, Secretary and Committee of Rights and Privileges – Whether parties had capacity to be impleaded in legal proceedings – Whether Legislative Assembly entitled to rely on immunity conferred under art. 72(1) of the Federal Constitution – Whether Assembly had power to punish acts of contempt committed beyond its walls – Powers*
E *of Assembly – Whether limited by Laws of the Constitution of Selangor 1959*

CONSTITUTIONAL LAW: *Legislature – State legislative powers – Privileges of Legislative Assembly – Secretary of the Committee of Rights and Privileges ('Secretary') issued summons against solicitor for issuance of letter of demand against Speaker of Assembly – Letter of demand contained indecent and threatening words*
F *– Contempt of Assembly – Allegation against – Solicitor filed suit against State Legislative Assembly, Secretary and Committee of Rights and Privileges – Whether Assembly acted within its constitutional and legal powers before invoking protection under art. 72(1) of the Federal Constitution – Whether Assembly had power to punish acts of contempt committed beyond its walls*

G ***CIVIL PROCEDURE:*** *Parties – Proper parties to be sued – State Legislative Assembly – Secretary of the Committee of Rights and Privileges ('Secretary') issued summons against solicitor for issuance of letter of demand against Speaker of Assembly – Letter of demand contained indecent and threatening words – Contempt of Assembly – Allegation against – Solicitor filed suit against State Legislative*
H *Assembly, Secretary and Committee of Rights and Privileges – Whether parties had capacity to be impleaded in legal proceedings*

The respondent ('plaintiff') was an advocate and solicitor. Acting on the instruction of his client, the plaintiff issued a letter of demand for payment of costs awarded in a civil suit filed by his client against the Speaker of the
I Selangor State Legislative Assembly ('the Assembly'). The letter was served

on the solicitors of the Speaker and was brought to the attention of the Assembly. The Assembly then passed a motion resolving that the plaintiff and his client be referred to the Committee of Rights and Privileges of the Selangor State Legislative Assembly ('the Committee') on a charge that they had committed an offence of contempt against the Assembly by issuing a letter to the Speaker which contained language that was indecent, insolent and threatening. As a result, the Secretary of the Committee ('the Secretary') issued a summons which ordered the plaintiff to appear before the Committee to explain the alleged contempt. Dissatisfied, the plaintiff filed an action in the High Court against the Assembly, the Secretary and the Committee ('the defendants'). The following declarations were granted in favour of the plaintiff, *ie*, that (i) the summons violated the Federal Constitution and the Selangor State Constitution and was therefore unconstitutional; (ii) the summons was *ultra vires* art. LXXVII and the Schedule of the Laws of the Constitution of Selangor 1959 ('the Selangor State Constitution') which sets out the powers and privileges of the Assembly, the Standing Orders of the Assembly and the Contempt of the House (State of Selangor) Enactment 2009 and was therefore null and void; (iii) the issuance of a legal letter of demand in the manner and substance of the letter could not be construed as a contempt of the Assembly; and (iv) any decision, order or matter which arose from the issuance or hearing pursuant to the summons was null and void. On appeal, the Court of Appeal upheld the decision of the High Court and dismissed the defendants' appeal. Hence, this appeal. Leave to appeal to this court had been granted on the following questions of law, *ie*, (a) whether the Assembly had the capacity to be impleaded in legal proceedings ('first question'); (b) whether the Secretary and the Committee had the capacity to be impleaded in legal proceedings ('second question'); and (c) whether upon the true construction of art. 72(1) of the Federal Constitution, the expression "proceedings in the legislative Assembly of any State" includes anything said or done by a non-member of a legislative assembly outside its precints ('third question'). The plaintiff relied on the case of *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener)* ('*YAB Dato' Dr Zambry*') which provides, *inter alia,* that although the legislative Assembly enjoyed immunity from court proceedings, such immunity was limited by the supremacy of the Constitution. Thus, in a case where the Legislative Assembly exceeds its jurisdiction as provided for under the Constitution, the court will interfere.

Held (dismissing appeal with costs)
Per Zulkefli Ahmad Makinuddin CJ (Malaya) delivering the judgment of the court:

(1) The proper way to implead the Assembly and the Committee was to name all the members and state that they were being sued as the Assembly and Committee respectively. The Assembly and the

Committee, just like the cabinet, were 'creatures' of the Constitution. If the defendants had raised the objection in the High Court on this technical procedural irregularity, it could have been easily cured by way of an amendment. However, notwithstanding that the Assembly and the Committee were not being properly pleaded, the courts have always accepted the naming of an institution created by the Federal and State Constitutions without the need of naming the members of that institution. (paras 26-28)

(2) Since the plaintiff was seeking declarations of his legal rights, he must secure a proper contradictor who has an interest to oppose the declarations he was seeking. On the facts, the parties having a true interest to oppose the declaration were the defendants. In the circumstances, the naming of the entities in the Federal and State Constitutions without naming the members thereof was an accepted procedural practice and did not prejudice the parties concerned. (paras 32-34)

(3) The Secretary of the Committee had a legal personality. It was sufficient if he alone was pleaded. The Secretary was merely following the order made by the Assembly. On the face of the summons signed by the Secretary, he was acting pursuant to the Schedule of the Selangor State Constitution and the standing orders on behalf of the Committee. Thus, the Secretary was a proper party to oppose the declarations sought by the plaintiff. (para 35)

(4) The Assembly must act within its constitutional and legal powers before the protection provided for under art. 72(1) of the Federal Constitution can arise, before passing a resolution of an act of contempt having been committed beyond the walls of the Assembly. The Assembly's powers are limited by the Selangor State Constitution. The Selangor State Constitution expressly provides in art. LXXVII as follows, *ie*, "the Legislative Assembly shall have the privileges and powers set out in the Schedule thereto". The Schedule in the Selangor State Constitution, which confers the power and privileges of the Assembly, reveal no provision that provides for contempt committed outside the legislative Assembly. The defendants too had failed to show which provisions in the Schedule was relied on to pass the resolution. The Assembly, therefore, had exceeded the jurisdiction provided for in the Schedule. (paras 46 & 47)

(5) The standing orders of the Assembly and the contempt of the House Enactment reveals no provision prescribing for contempt committed beyond the walls of the Assembly. Therefore, the resolution prescribing the alleged contempt and to refer the plaintiff to the Committee was unconstitutional, being *ultra vires* the Schedule of the Selangor State Constitution and the standing orders of the Assembly, made pursuant to art. LXXVII of the Selangor State Constitution. In the circumstances,

the principle laid down in *YAB Dato' Dr Zambry* applied to this case. The Assembly being in the same position as the Perak Legislative Assembly and the principle in *Kielley v. Carson* having been accepted in *YAB Dato' Dr Zambry*, that in the absence of express grant, legislative Assemblies had no power to adjudicate upon, or punish contempt committed beyond their walls, applied with equal force to the present case. In the circumstances, the first and the second questions were answered in the affirmative. The third question, however, was answered in the negative. (paras 48, 49 & 53)

Bahasa Malaysia *Headnotes*

Responden ('plaintif') adalah seorang peguam bela dan peguam cara. Bertindak atas arahan anak guamnya, plaintif telah mengeluarkan satu surat tuntutan bagi bayaran kos yang diperolehi melalui tindakan sivil yang difailkan oleh anak guamnya terhadap *Speaker* Dewan Undangan Negeri Selangor ('Dewan'). Surat itu telah diserahkan kepada peguam *Speaker* dan dibawa kepada perhatian Dewan. Dewan kemudian meluluskan usul yang memutuskan bahawa plaintif dan anak guamnya dirujuk kepada Jawatankuasa Hak dan Kebebasan Dewan Undangan Negeri Selangor ('Jawatankuasa') atas tuduhan melakukan kesalahan penghinaan terhadap Dewan dengan mengeluarkan surat kepada *Speaker* yang mengandungi bahasa tidak senonoh, biadap dan mengancam. Maka, Setiausaha Jawatankuasa ('Setiausaha') telah mengeluarkan saman dengan mengarahkan plaintif untuk menghadirkan diri di hadapan Jawatankuasa dan memberi penjelasan berkenaan penghinaan tersebut. Tidak berpuas hati, plaintif telah memfailkan tindakan di Mahkamah Tinggi terhadap Dewan, Setiausaha dan Jawatankuasa ('defendan-defendan'). Deklarasi-deklarasi berikut yang berpihak kepada plaintif telah diberikan, iaitu, bahawa (i) saman yang dikeluarkan itu telah melanggar Perlembagaan Persekutuan dan Perlembagaan Negeri Selangor dan oleh itu, tidak berperlembagaan; (ii) saman itu adalah *ultra vires* Perkara LXXVII dan Jadual Undang-Undang Perlembagaan Selangor 1959 ('Perlembagaan Negeri Selangor') yang memperihalkan kuasa dan kebebasan Dewan, Perintah Tetap Dewan dan Enakmen Penghinaan Dewan (Negeri Selangor) 2009 dan oleh itu, tidak sah dan terbatal; (iii) surat tuntutan tersebut tidak boleh dianggap sebagai penghinaan Dewan; dan (iv) sebarang keputusan, perintah atau perkara yang berbangkit daripada pengeluaran atau pendengaran berikutan saman tersebut adalah tidak sah dan terbatal. Atas rayuan, Mahkamah Rayuan telah mengekalkan keputusan Mahkamah Tinggi dan menolak rayuan pihak defendan. Oleh itu, rayuan ini. Kebenaran untuk merayu telah diberikan berdasarkan persoalan undang-undang berikut, iaitu (a) sama ada tindakan boleh diambil terhadap Dewan dalam prosiding undang-undang ('soalan pertama'); (b) sama ada tindakan boleh diambil terhadap Setiausaha dan Jawatankuasa dalam prosiding undang-undang; dan (c) sama ada berdasarkan

takrifan sebenar per. 72(1) Perlembagaan Persekutuan, perkataan 'prosiding di dalam Dewan Undangan mana-mana Negeri' merangkumi apa-apa yang dikatakan atau dibuat oleh seseorang bukan ahli Dewan Undangan di luar batasannya ('persoalan ketiga'). Plaintif telah bergantung kepada kes *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener)* ('*YAB Dato' Dr Zambry*') yang memutuskan, antara lain, bahawa walaupun Dewan Undangan diberi imuniti daripada tindakan mahkamah, imuniti sedemikian dihadkan oleh kekuasaan Perlembagaan. Oleh itu, apabila Dewan Undangan melebihi bidang kuasanya seperti diperuntukkan di bawah Perlembagaan, mahkamah akan masuk campur.

Diputuskan (menolak rayuan dengan kos)
Oleh Zulkefli Ahmad Makinuddin HB (Malaya) menyampaikan penghakiman mahkamah:

(1) Cara sepatutnya untuk mengambil tindakan terhadap Dewan dan Jawatankuasa adalah untuk menamakan semua ahli-ahlinya dan menyatakan bahawa mereka disaman sebagai Dewan dan Jawatankuasa masing-masing. Dewan dan Jawatankuasa, sama seperti Kabinet, merupakan 'ciptaan' Perlembagaan. Jika pihak defendan telah membangkitkan bantahan di Mahkamah Tinggi berkenaan ketidakaturan prosedur ini, ia mungkin boleh dipulihkan melalui pindaan. Walau bagaimanapun, tanpa mengambil kira bahawa entiti-entiti ini tidak diplid dengan betul, mahkamah telah menerima penamaan institusi yang dicipta oleh Perlembagaan Persekutuan dan Negeri tanpa kehendak untuk menamakan ahli-ahli institusi tersebut.

(2) Memandangkan plaintif telah memohon deklarasi untuk hak undang-undangnya, dia perlu memastikan terdapatnya pihak melawan yang mempunyai kepentingan untuk melawan deklarasi yang dituntut olehnya. Berdasarkan fakta, pihak-pihak yang mempunyai kepentingan sebenar untuk melawan deklarasi tersebut adalah defendan-defendan. Dalam keadaan ini, penamaan entiti-entiti dalam Perlembagaan Persekutuan dan Negeri tanpa menamakan ahli-ahlinya diterima sebagai amalan prosedur dan tidak memprejudiskan pihak-pihak tersebut.

(3) Setiausaha Jawatankuasa mempunyai kapasiti undang-undang. Adalah mencukupi jika tindakan diambil terhadap beliau sahaja. Setiausaha hanya mengikut perintah yang dibuat oleh Dewan. Memandangkan saman telah ditandantangani oleh Setiausaha, maka beliau hanya bertindak mengikut Jadual kepada Perlembagaan Negeri Selangor dan Perintah Tetap bagi pihak Jawatankuasa. Oleh itu, Setiausaha merupakan pihak berpatutan untuk melawan deklarasi-deklarasi yang dituntut oleh plaintif.

(4) Dewan hendaklah bertindak mengikut Perlembagaannya dan kuasa undang-undang sebelum perlindungan di bawah per. 72(1) Perlembagaan Persekutuan boleh dibangkitkan, sebelum resolusi berkenaan perbuatan penghinaan yang dilakukan melampaui kuasa Dewan telah diluluskan. Kuasa Dewan dihadkan oleh Perlembagaan Negeri Selangor. Perlembagaan Negeri Selangor dengan nyata memperuntukkan dalam Perkara LXXVII seperti berikut, iaitu, 'Dewan Undangan mempunyai kebebasan dan kuasa seperti dinyatakan dalam Jadual'. Jadual Perlembagaan Negeri Selangor, yang memberi kuasa dan kebebasan kepada Dewan, tidak menunjukkan sebarang peruntukan untuk penghinaan yang dilakukan di luar Dewan Undangan. Defendan-defendan juga gagal untuk menunjukkan peruntukan manakah dalam Jadual yang digantung olehnya untuk meluluskan resolusi tersebut. Dewan, dengan itu, telah melampaui bidang kuasanya yang diberi dalam Jadual.

(5) Tiada peruntukan di dalam Perintah Tetap Dewan dan Enakmen Penghinaan Dewan yang menyatakan mengenai penghinaan yang dilakukan di luar Dewan Undangan. Oleh itu, resolusi yang menyatakan penghinaan tersebut dan merujuk plaintif kepada Jawatankuasa adalah tidak berperlembagaan, *ultra vires* Jadual Perlembagaan Negeri Selangor dan Perintah Tetap Dewan, yang dibuat di bawah Perkara LXXVII Perlembagaan Negeri Selangor. Dalam keadaan ini, prinsip yang dinyatakan dalam *YAB Dato' Dr Zambry* terpakai dalam kes ini. Dewan di sini berkedudukan sama seperti keadaan Dewan Undangan Perak dan prinsip dalam *Kielley v. Carson* yang diterima dalam *YAB Dato' Dr Zambry*, bahawa apabila kebenaran tidak diberikan, Dewan undangan tidak mempunyai kuasa untuk memutuskan atau menghukum penghinaan yang dilakukan melebihi kuasa mereka, terpakai dengan daya yang seimbang dalam kes di sini. Oleh itu, persoalan pertama dan kedua dijawab dalam bentuk afirmatif. Persoalan ketiga pula dijawab dalam bentuk negatif.

Case(s) referred to:

Abdul Karim Abdul Ghani v. The Legislative Assembly of The State of Sabah [1988] 1 CLJ 460; [1988] 1 CLJ (Rep) 1 SC ***(refd)***

Ah Chong v. Legislative Assembly of Western Samoa & Ors [2001] NZAR 418 ***(refd)***

Ah Thian v. Government of Malaysia [1976] 1 LNS 3 FC ***(refd)***

Datuk Joseph Pairin Kitingan v. Tun Datu Haji Mustapha Datu Harun]1985] 1 LNS 7 SC ***(refd)***

Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor (1) [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72 SC ***(refd)***

Doyle v. Falconer LR 1 PC 328 ***(refd)***

Election Commission, Malaysia v. Abdul Fatah Haron [1987] 2 CLJ 193; [1987] CLJ (Rep) 92 SC ***(refd)***

Fan Yew Teng v. Government of Malaysia [1976] 1 LNS 28 HC ***(dist)***

Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors [1986] 2 CLJ 209; [1986] CLJ (Rep) 142 SC ***(refd)***
House of Commons v. Canada (Labour Relations Board) [1986] 2 FC 372 ***(refd)***
Karpal Singh v. Sultan of Selangor [1987] 2 CLJ 342; [1987] CLJ (Rep) 686 HC ***(refd)***
Kielley v. Carson IV Moore's PC Cases 63 ***(foll)***
Owi Cheng Ian v. Suruhanjaya Pasukan Polis Diraja Malaysia & Ors [2014] 8 CLJ 559 CA ***(refd)***
Russia Commercial and Industrial Bank v. British Bank of Foreign Trade Ltd [1921] 2 AC 438 ***(refd)***
Selvaraju Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor [2007] 6 CLJ 245 FC ***(refd)***
Teh Cheng Poh v. PP [1978] 1 LNS 202 PC ***(refd)***
Teng Chang Khim & Ors v. Dato' Raja Ideris Raja Ahmad & Ors [2014] 3 CLJ 173 FC ***(dist)***
Tun Datu Haji Mustapha Datu Harun v. State Legislative Assembly of Sabah & Anor [1993] 3 CLJ 546 HC ***(refd)***
Tun Datu Haji Mustapha Datu Harun v. State Legislative Assembly of Sabah & Anor [1993] 1 CLJ 86 HC ***(refd)***
YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener) [2009] 4 CLJ 253 FC ***(foll)***
Yang Dipertua, Dewan Rakyat & Ors v. Gobind Singh Deo [2014] 9 CLJ 577 FC ***(refd)***

Legislation referred to:
Constitution of the State of Sabah, art. 18(2)(d)
Federal Constitution, arts. 10(1)(c), 63(1), 64, 72(1)

For the appellants - Gopal Sri Ram, Chan Kok Keong, Robin FS Lim & David Yii; M/s Chan & Assocs
For the respondent - Firoz Hussein, Cheng Mai, Norhazira & Abu Haiyan; M/s Hafarizam Wan & Aisha Mubarak
Amicus Curiae - Amarjeet Singh Serjit Singh; SFC
Watching Brief - Nizam Bashir; Bar Council Legal Aid Centre

Reported by Kumitha Abd Majid

JUDGMENT

Zulkefli Ahmad Makinudin CJ (Malaya):

Introduction

[1] This is an appeal by the appellants against the decision of the Court of Appeal in affirming the decision of the High Court allowing the declarations sought by the respondent in relation to the summons issued by the second appellant summoning the respondent to attend a hearing of the Committee of Rights and Privileges ("the Committee") of the Selangor State Legislative Assembly ("the Assembly"). The respondent was the plaintiff and the appellants were the defendants before the High Court. We shall refer to the parties as they were in the High Court.

[2] Leave to appeal to this court has been granted on the following questions of law:

(a) Whether the Dewan Undangan Negeri has the capacity to be impleaded in legal proceedings?

(b) Whether the Secretary of the Committee of Rights and Privileges and the Committee of Rights and Privileges have the capacity to be impleaded in legal proceedings?

(c) Whether upon the true construction of art. 72(1) of the Federal Constitution the expression "proceedings in the Legislative Assembly of any State" includes anything said or done by a non-member of a Legislative Assembly outside its precints?

[3] In the appeal before this court learned Senior Federal Counsel, Encik Amarjeet Singh of the Attorney General Chambers appeared as *amicus curiae* to the court.

Background Facts

[4] The relevant background facts of the case are these. The plaintiff is an advocate and solicitor. On instruction of his client YB Badrul Hisham bin Abdullah, the Selangor State Assemblyman for the State Constituency of N46 Port Klang, the plaintiff had signed and issued a letter of demand dated 29 March 2011 for payment of costs awarded in a civil suit filed by YB Badrul Hisham against YB Dato' Teng Chang Kim, the Speaker of the Selangor Legislative Assembly ("the speaker"). The letter was served on the solicitors of the speaker. The contents of the letter of demand are as follows:

> We have our client's strict instruction that the cost of RM40,000.00 is to be paid to the plaintiff and/or us as Solicitors for the plaintiff within SEVEN (7) DAYS from this letter.
>
> We also have our client's instruction to proceed with the Bankruptcy Proceeding against your client for the failure to comply with the order dated 18th February 2011 which was served on you on 22nd March 2011 as solicitors on record for the 1st defendant.

[5] The letter was brought to the attention of the Assembly. On 1 April 2011 the Assembly passed a motion resolving that the plaintiff and his client be referred to the committee on a charge that they had committed an offence of contempt of the Assembly by the act of sending to the speaker a letter which contained language that was indecent, insolent and threatening ("the alleged contempt").

[6] On 12 April 2011, the secretary of the committee ("the Secretary") issued a summons ("the summons") which ordered the plaintiff to appear before the committee on 29 April 2011 to explain the alleged contempt. The contents of the summons are as follows:

A Pada menjalankan kuasa-kuasa yang diperuntukkan oleh Jadual (Perkara LXXVII), Kuasa dan Keistimewaan Dewan Negeri, Undang-Undang Tubuh Kerajaan Selangor, 1959, dan Peraturan-Peraturan Tetap Negeri Selangor, saya bagi pihak Jawatankuasa Hak dan Kebebasan dengan ini memerintahkan bahawa kamu, Mohd Hafarizam bin Harun, selaku peguam kepada YB Tuan Badrul Hisham bin Abdullah dikehendaki B menghadirkan diri di hadapan Jawatankuasa Hak dan Kebebasan pada 29 April 2011… untuk memberikan penjelasan terhadap tuduhan … melakukan kesalahan menghina Dewan dengan menghantar sepucuk surat bertarikh 29 Mac 2011 kepada Tuan Speaker Dewan Negeri Selangor yang berbahasa amat tidak senonoh, biadab dan mengugut.

C **[7]** On 26 April 2011, the plaintiff filed an originating summons at the High Court at Shah Alam against the Assembly, the secretary, and the committee, and on 31 May 2011 obtained the following declarations:

(1) the summons issued by the secretary summoning the plaintiff to appear before the committee to answer the charge of contempt of the Assembly D in the circumstances set out in the Summons violates the Federal Constitution and the Selangor State Constitution and is therefore unconstitutional;

(2) the summons is *ultra vires* the art. LXXVII and the Schedule of the Laws of the Constitution of Selangor 1959 ("the Selangor State Constitution") E which sets out the Powers and Privileges of the Assembly, the Standing Orders of the Assembly and the contempt of the House (State of Selangor) Enactment 2009 ("the Enactment 2009") and is therefore, null and void;

F (3) the summons is in violation of the law;

(4) that issuing a legal letter of demand in the manner and substance of the letter dated 29 May 2011 cannot be construed as a contempt of the Assembly;

G (5) the plaintiff is not required to attend the hearing of the committee as set out in the summons;

(6) that any decision, order or matter which arises from the issuance or hearing pursuant to the summons is null and void; and

(7) that the plaintiff is not bound by any direction or order of the defendants H which arises out of the motion or summons.

[8] The defendants filed an appeal against the decision of the High Court. The defendants' appeal was dismissed by the Court of Appeal on the ground that no provision has been made to provide for the offence of contempt under which the plaintiff was charged. The Court of Appeal in arriving at its I decision amongst others applied the principle laid down in *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakkumar Varatharaju Naidu; Attorney General Malaysia (Intervener)* [2009] 4 CLJ 253; [2009] 4 MLJ 24. The Court of Appeal upheld the declaration that the summons was *ultra vires* the

Schedule of the Selangor State Constitution and the Enactment 2009 and made the consequential order that any decision or order made affecting the plaintiff in relation to the summons was also null and void.

Submissions Of The Defendants

[9] On the first question posed before this court it was the submission of the defendants that the first defendant (as the Assembly) does not have the capacity to be impleaded in legal proceedings. Learned counsel for the defendants in support of the defendants' contention referred to the decision of the New Zealand Court of Appeal in *Ah Chong v. Legislative Assembly of Western Samoa & Ors* [2001] NZAR 418 and reads as follows:

> We have reservations about the somewhat novel course of naming a House of Legislature as a defendant. *It is not a body corporate and we doubt whether it can sue or be sued. The orthodox procedure would be to sue Ministers of the Speaker of other officer who might seek to enforce decisions of the House alleged to be invalid*. (emphasis added)

[10] Learned counsel for the defendant also referred to us the decision of the Canadian Federal Court of Appeal in *House of Commons v. Canada (Labour Relations Board)* [1986] 2 FC 372 which *inter alia* held as follows:

> 26. By no process of reasoning or of imagination can I conceive of the House as being a person. It is an assembly of persons, *albeit*, no doubt, the most important one in the country. Nothing in the Constitution Act, 1867 nor in the law, custom and convention of the Constitution as I understand it, gives to the House corporate status or personality. Indeed everything points the other way. It is of the essence of a corporation that it shall be perpetual. But the House of Commons is by its nature an ephemeral thing, having by constitutional prescription a maximum life span of five years. When the House is dissolved it ceases to exist.
>
> …
>
> 32. Whatever the status of Parliament, however, there is no authority that I know of to indicate that the House of Commons may be a person.
>
> 33. There is authority the other way. In *Gabias c. L'Assemblee legislative de la province de Quebec* … Casgrain J., after quoting sections 71 and 80 of the Constitution Act, 1867, which provide for the Legislature and Legislative Assembly of Quebec in terms indistinguishable from what is found in sections 17 and 37 with regard to the Parliament and House of Commons of Canada, said as follows:
>
> '*There is thus nothing in these provisions which confers on the Legislative Assembly a legal entity in the legal sense, with the right to bring an action at law. All the Constitution says is that the Legislative Assembly consists of sixty-five representatives of the people (now ninety five) who meet at least once a year to enact legislation. It is a legislative body which has no legal personality apart from that of each member and which, accordingly, may not be used as such*.'
>
> (emphasis added)

[11] Learned counsel for the defendants further submitted that likewise, there is nothing in the Selangor State Constitution that confers on the Selangor State Assembly a legal personality. The relevant laws of the Selangor State Constitution provides as follow:

> LXI. The Legislature of the State shall consist of His Royal Highness and one House to be known as the Dewan Negeri and in English, the Legislative Assembly.
>
> LXII(1). The Legislative Assembly shall consist of the number of elected members as the Legislature may by law provide.

[12] Based on the above provisions of the Selangor State Constitution it was contended for the defendants that the Assembly as an assembly of persons, could not be named as a defendant in these proceedings. The proper party should rightly be the Speaker of the State Assembly in his or her official capacity. (See the case of *Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors* [1986] 2 CLJ 209; [1986] CLJ (Rep) 142; [1986] 2 MLJ 412). The speaker is the person having the decision making power for the Assembly.

[13] It was also the contention of the defendants that the second defendant as the secretary of the committee does not have the capacity or legal personality to be named as a party to legal proceedings. The secretary of the committee simply holds a clerical or administrative position and without any decision-making power. The second defendant, in issuing the summons dated 12 April 2011, was merely following out the orders of the committee. A person with no decision-making power cannot be the proper person to be named. Accordingly it was submitted for the defendants that the plaintiff's case should be dismissed at the threshold as no proper party was impleaded.

[14] Learned counsel for the defendants submitted that in the event the court does not agree with the defendants' submission that no proper party has been impleaded, the defendants contended that there is an immunity against court proceedings granted by art. 72(1) of the Federal Constitution which includes the summons issued by the committee.

[15] It was impressed upon this court that the Court of Appeal had accepted the fact that it is outside the jurisdiction of any court to question the validity of the proceedings of the Selangor State Assembly. The case of *Haji Salleh Jafaruddin* is a case directly on point wherein it held that proceedings of a Committee of the House are the proceedings of the Assembly and amongst others said:

> It is clear that the Standing Orders have been made for the purpose of regulating the procedure for the proceedings of the Dewan and that the proceedings of the Committee of Privileges form part of the proceedings of the Dewan. Therefore to question the validity of the proceedings of the Committee of Privileges is to question the validity of the proceedings of the Dewan, and to do so in the Court is forbidden under art. 72(1) of the Federal Constitution.

[16] The defendants in their contention that it is outside the jurisdiction of any court to question the validity of the proceedings of the Selangor State Assembly cited also the following two decided cases:

Firstly, the Federal Court in *Teng Chang Khim & Ors. v. Dato' Raja Ideris Raja Ahmad & Ors* [2014] 3 CLJ 173; [2014] 4 MLJ 12 held at p. 42 as follows:

> [48] Reverting to the declaration sought in the originating summons, in prayer (1), although the composition of SELCAT was challenged, what was effect questioned was the validity of the resolution of the SLA (establishing SELCAT) made in exercise of its collective and deliberative functions. The resolution was passed without any objection pursuant to a motion made in the meeting of the SLA. What was done by the SLA was done in the proceedings of the assembly, the validity of which could not be impeached or questioned in any Court or tribunal out of the assembly in the light of art. 72(1) of the Federal Constitution and the para 2 in the Schedule to the Selangor Constitution and the authorities we have adverted to. What was done by the SLA was therefore non-justiciable.

Secondly, in *Fan Yew Teng v. Government of Malaysia* [1976] 1 LNS 28; [1976] 2 MLJ 262, Chang Min Tat J (as he then was) quoted with approval SA de Smith in his *Judicial Review of Administrative Action* (3rd Edition) as follows:

> *The courts have no jurisdiction to restrain by injunction, or otherwise to pass upon, any conduct that forms part of proceedings in Parliament, even though the matter in issue is not directly connected with the process of legislation.* In the well-known case of *Bradlaugh v. Gosett* the court refused to award the plaintiff an injunction against the Serjeant-at-Arms to restrain him from enforcing an order of the House of Commons requiring him to exclude the plaintiff from the House, or a declaration that the order of the House was void. *Assuming that the plaintiff was right in his contention that the order of the House was based upon the misconstruction of a statute, nevertheless the courts had no jurisdiction to interfere, for the matter fell exclusively within the scope of the privilege of the House to regulate its own internal proceedings*. (emphasis added)

[17] It was further submitted for the defendants that, even though as the signatory to the summons the second defendant was not a member of the Selangor State Assembly, it was obvious that the second defendant did so on behalf the committee in an administrative capacity. To hold that such summons come within the jurisdiction of the courts would be to circumvent the clear intention of art. 72 of the Federal Constitution and render its protection illusory.

Submissions Of The Plaintiff

[18] On the first and second questions posed before this court it was submitted for the plaintiff that in Malaysia, the naming of a State Legislative Assembly in court proceedings is not without precedent. The Supreme Court in the case of *Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor*

A [1992] 2 CLJ 1125; [1992] 1 CLJ Rep 72 heard and disposed of the case on the basis that the Kelantan State Assembly was cited as a party to the proceedings. Further and in any event, even if the defendants are contending that the plaintiff has failed to name the speaker of the State Legislative Assembly in the suit, there has been no prejudice caused.

B **[19]** Apart from the above case it was contended for the plaintiff that the case of *Tun Datu Haji Mustapha Datu Harun v. State Legislative Assembly of Sabah & Anor* [1993] 3 CLJ 546; [1993] MLJU 531 also included the State Legislative Assembly as a party in a suit.

C **[20]** Further it was contended for the plaintiff that at all material times, the defendants were in reality contesting the suit on behalf of the relevant parties but chose not to make an application to the court to join the speaker as an interested party. In the circumstances there has been no prejudice caused to the defendants by the plaintiff naming the first defendant as the Selangor State Assembly.

D **[21]** On the third question posed before this court it was the submission of the plaintiff that the Legislative Assembly would be entitled to rely on the immunity under art. 72 of the Federal Constitution if it can be established that the matters in contention fall within the provisions of the said art. 72. It is the plaintiff's case that the immunity of the Legislative Assembly under art. 72 of the Federal Constitution does not apply to the present case.

[22] Learned counsel for the plaintiff in his submission cited the case of *YAB Dato' Dr Zambry Abd Kadir v. YB Sivakumar Varatharaju & Ors* [2009] 4 CLJ 253 which *inter alia* provides that although the Legislative Assembly enjoys immunity from court proceedings, such immunity is limited by the supremacy of the Constitution. Thus, in a case where the Legislative Assembly exceeds its jurisdiction as provided for under the Constitution, the court will interfere.

[23] It is the plaintiff's case that the challenge in court made by him is not against the resolution of the Assembly but the issuance of a summon to a non-member to answer a purported charge of contempt in relation to the issuance of a solicitors' letter to the solicitor of the Speaker. It was submitted for the plaintiff that the summons dated 12 April 2011 issued by the defendants which was being challenged by the plaintiff had nothing to do with any proceedings in the Assembly. It was not in respect of anything said or vote given by the defendants when taking part in any proceedings in the Assembly and had nothing to do with anything published by or under the authority of the Assembly.

[24] It was submitted for the plaintiff that his solicitors' legal letter of demand for costs, which was sent to a firm of solicitors representing the speaker of the house, in respect of costs granted by a court order was not a matter within the scope of the proceedings of the Assembly where the Assembly could act upon.

Decision Of This Court

[25] In this case the plaintiff named the Assembly and the Committee as parties. While this is not the right way to name these entities, we take the view there is no prejudice caused to the defendants. We also noted that there was no objection made of this fact in the proceedings before the High Court or the Court of Appeal.

[26] We are of the view that the proper way to implead the Assembly and the Committee was to name all the members and state that they were being sued as the Assembly and committee respectively. The authority for this proposition is in the judgment of Lord Diplock in *Teh Cheng Poh v. PP* [1978] 1 LNS 202; [1979] 1 MLJ 50 at p. 55 wherein His Lordship stated:

> This, however, does not leave the courts powerless to grant to the citizen a remedy in cases in which it can be established that a failure to exercise his power of revocation would be an abuse of his discretion. Article 32(1) of the Constitution makes the Yang di-Pertuan Agong immune from any proceedings whatsoever in any court. So mandamus to require him to revoke the Proclamation would not lie against him; *but since he is required in all executive functions to act in accordance with the advice of the cabinet, mandamus could, in their Lordships' view, be sought against the members of the Cabinet requiring them to advise the Yang di-Pertuan Agong to revoke the Proclamation*. (emphasis added)

[27] The Assembly and the Committee just like the cabinet are "creatures" of the Constitution. The plaintiff therefore, ought to have named all the members of the assembly and the committee and stating that they were being sued as the assembly and the committee respectively. In the present case, had the defendants raise the objection in the High Court of this technical procedural irregularity, it could have been easily cured by way of an amendment.

[28] Notwithstanding the Assembly and the Committee not being properly pleaded, the courts have always accepted the naming of an institution created by the Federal and State Constitutions without the need of naming the members of that institution. In this regard, our courts have accepted the legislative assembly of the States as proper parties exemplified in the following cases:

(i) In *Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor (1)* [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72; [1992] 1 MLJ 697 where an order was sought to declare Article XXXIA of the Kelantan State Constitution null and void on the grounds that it is *ultra vires* art. 10(1)(c) of the Federal Constitution.

(ii) In *Tun Datu Haji Mustapha Datu Harun v. State Legislative Assembly of Sabah & Anor* [1993] 1 CLJ 86; [1993] 1 MLJ 26 the Legislative Assembly of Sabah was held to be a proper party in a case where an

application was made to declare art. 18(2)(d) of the Sabah State Constitution null and void on the grounds that it is *ultra vires* art. 10(1)(c) of the Federal Constitution.

(iii) The Legislative Assembly of Sabah was made a party in *Abdul Karim Abdul Ghani v. The Legislative Assembly of The State of Sabah* [1988] 1 CLJ 460; [1988] 1 CLJ (Rep) 1; [1988] 1 MLJ 171.

[29] It is our judgment that there is a plethora of cases where entities, created by the Federal Constitution, have been impleaded as parties, such as the Election Commission, the Police Force Commission and the Public Services Commission without the persons who make up these entities being named. (See the cases of *Election Commission, Malaysia v. Abdul Fatah Haron* [1987] 2 CLJ 193; [1987] CLJ (Rep) 92; [1987] 2 MLJ 716; *Owi Cheng Ian v. Suruhanjaya Pasukan Polis Diraja Malaysia & Ors* [2014] 8 CLJ 559; [2014] 6 MLJ 695; *Selvaraju Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor* [2007] 6 CLJ 245; [2007] 7 MLJ 1).

[30] We would like to state that the Assembly and the Committee are made up of identifiable persons. Both are creations of the Selangor State Constitution. The Assembly is a component of the State Legislature whilst the Committee is a creation of the assembly made pursuant to the powers to regulate its own procedure under art. LXXV(1) of the Selangor State Constitution. The Assembly, pursuant to this power, made standing orders to establish the Committee and its functions.

[31] One of the established functions of the Assembly is to uphold the privileges of the assembly. Punishing persons who have committed contempt of the Assembly is one of its privileges. The Committee has a duty under its Standing Order 70 to consider any contempt referred to it by the assembly. In this case, the plaintiff contended that the resolution passed by the Assembly and the subsequent decision of the Committee imposing a fine of RM20,000 for the alleged contempt had affected the plaintiff's legal rights.

[32] We agree with the submission of Encik Amarjeet Singh of the Attorney General Chambers appearing as *amicus curiae* that as the plaintiff is seeking declarations of his legal rights, he must secure a proper "contradictor" who has an interest to oppose the declarations he is seeking. This principle of securing a proper contradictor by a claimant seeking a declaration was stated by Lord Dunedin in *Russia Commercial and Industrial Bank v. British Bank of Foreign Trade Ltd* [1921] 2 AC 438 and followed by Abdul Hamid, (CJ, Malaya) in *Karpal Singh v. Sultan of Selangor* [1987] 2 CLJ 342; [1987] CLJ (Rep) 686; [1988] 1 MLJ 64 at p. 66 wherein it states as follows:

> The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought.

[33] We are of the view that in the circumstances of this case the proper defendants or contradictors are before the court. From the facts, the parties having a true interest to oppose the declaration are the defendants, whose interest arises from the following facts:

(i) the Assembly as a body was responsible for referring the plaintiff to the committee on the offence of contempt of the Legislative Assembly in the circumstances described in the summons.

(ii) the Committee heard the summons and fined the plaintiff RM20,000 for the said contempt.

(iii) the secretary, as it appears from the face of the summons, issued the summons pursuant to the schedule of the Selangor State Constitution and its standing orders on behalf of the Committee.

[34] We would take the view that in Malaysia the naming of the entities in the Federal and State Constitutions without naming the members thereof is an accepted procedural practice and does not prejudice the parties concerned.

[35] As regards to the position of the second defendant, we are of the view that the secretary of the committee has a legal personality. It was sufficient if he alone was pleaded. The secretary was merely following orders made by the Assembly. On the face of the summons signed by the secretary, he was acting pursuant to the schedule of the Selangor State Constitution and the standing orders on behalf of the committee. In the circumstances of this case, the secretary is a proper party to oppose the declarations sought by the plaintiff.

[36] On the third question posed before this court, the issue for determination is whether the summon issued pursuant to a resolution of the Assembly, which resolved that an alleged act committed by the plaintiff beyond its walls to be in contempt of the Legislative Assembly and requiring the plaintiff to show cause before the committee, is justiciable in view of art. 72(1) of the Federal Constitution. Article 72(1) reads as follows:

> The validity of any proceedings in the Legislative Assembly of any state shall not be question in any court.

[37] It is to be noted that the construction of art. 72(1) has come up for determination by our apex court a number of times. On this point it must always be borne in mind that the power of Parliament and the Legislative Assemblies of the States in Malaysia are limited by the Federal Constitution and the State Constitutions respectively. This principle is as stated by Suffian LP in the case of *Ah Thian v. Government of Malaysia* [1976] 1 LNS 3; [1976] 2 MLJ 112 at 113 which reads as follows:

> The doctrine of supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of State legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.

[38] As regards to the application of art. 72(1), previous cases have held that the court has jurisdiction to determine whether the resolutions passed by the Legislative Assembly exceeded the constitutional provisions. In the case of *Datuk Joseph Pairin Kitingan v. Tun Datu Haji Mustapha Datu Harun*]1985] 1 LNS 7; [1987] 1 MLJ 471 the respondent had applied to the court for declarations that his appointment as Chief Minister of Sabah by the first appellant was valid and the subsequent revocation of his appointment and of the appointment of the second appellant as Chief Minister was *ultra vires* the Constitution of Sabah and therefore null and void. The appellants raised, *inter alia*, a preliminary objection that the position of the Chief Minister was a privilege of the Legislative Assembly and that since the privilege had been exercised by resolutions passed by the Legislative Assembly on a motion of confidence on 30 May 1985 and other matters on 3 August 1985, the issues raised by the respondent are not justiciable. The Supreme Court speaking through Abdul Hamid CJ (Malaya) in upholding the dismissal of the preliminary objection held that:

> The Constitution has made the Courts the ultimate interpreter of the Constitution. The Courts accordingly cannot reject a *bona fide* controversy as to whether some action denominated 'political' exceeds constitutional authority.
>
> We cannot see any substance whatsoever in the contention that a privilege of the State Legislative Assembly is involved in the matter before us or that the jurisdiction of the Court to decide the issues raised is ousted as a result of the resolutions of the Assembly passed on May 30 and August 3 respectively.
>
> Motions of confidence or of no confidence or whatever passed in the Legislative Assembly might be political ratification or rejection of the choice made but cannot, in our view, affect the primary issues of the appointment and revocation which are legal and justiciable questions clearly within the competence and judicial consideration and determination.

[39] In the case of *Yang Dipertua, Dewan Rakyat & Ors v. Gobind Singh Deo* [2014] 9 CLJ 577; [2014] 6 MLJ 812, the Federal Court held that the privileges under art. 63(1) of the Federal Constitution cannot extend to displacing the provisions of a written law made pursuant to a provision of the Constitution in the absence of a written law to the contrary. In *Gobind Singh Deo*, a member of the Dewan Rakyat was punished with suspension and deprived of his remuneration as a Member of Parliament for 12 months for committing an act of contempt within the walls of the assembly pursuant to resolutions passed in the Dewan. The contempt and the punishment of suspension were held to be unimpeachable as they were within the jurisdiction of the Dewan Rakyat. However, the court held that since the remuneration of a Member of Parliament was provided under the Members of Parliament (Remuneration) Act 1980 passed pursuant to art. 64 of the Federal Constitution, the same could not be displaced in the absence of clear written law notwithstanding the resolutions passed by the Dewan Rakyat.

[40] Useful reference can be made to the case of *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju (Attorney General Malaysia, intervener) (supra)*, a case very much similar to the present case concerning an act of contempt of the Legislative Assembly committed beyond the walls of the Legislative Assembly in relation to art. 72(1) wherein the Federal Court held that:

> Article 72(1) of the Federal Constitution must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has been done. The Court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issue raised by the applicants are therefore justiciable.

[41] In *YAB Dato' Dr Zambry*'s case, the applicants, who were members of the Legislative Assembly of Perak, were found guilty and suspended from the Legislative Assembly for contempt of the Legislative Assembly which was committed beyond its walls. The applicants contended that no provision was made pursuant to art. LXIV of the Perak State constitution in respect of the contempt while the respondents contended that the decision of the Committee of Privileges was a proceeding of the Legislative Assembly and therefore not justiciable under art. 72(1).

[42] The Federal Court followed the Privy Council's decision in *Kielley v. Carson IV Moore's PC Cases 63* which *inter alia* held that in a case of contempt committed beyond the walls of the Legislative Assembly, the Legislative Assemblies in the British Colonies have, in the absence of express grant, no power to adjudicate upon, or punish contempt committed beyond their walls.

[43] The Federal Court in *Dato' Dr Zambry* held that the Legislative Assembly had exceeded its powers as there were no provisions in the standing orders of the Assembly made pursuant to art. LXIV of the Perak State Constitution or the Perak's Legislative Assembly (Privileges) Enactment, 1959 prescribing the alleged contempt the applicants were punished for. The suspensions of the applicants were therefore declared null and void.

[44] We noted that the basis for the decision in *Kielley v. Carson* was that the Legislative Assemblies in the former British Colonies did not possess the powers of the House of Commons in England which had the power to punish acts of contempt committed beyond its walls. Baron Parke stated in his judgment the reason why the House of Commons possessed such power in the following words.

> The reason why the House of Commons has this power, is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the *lex et consuetudo Parliamenti*, which forms a part of the Common Laws of the land, and according to which the High

Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one.

[45] The Federal Court in *Dato' Dr Zambry* also referred to the case of *Doyle v. Falconer* LR 1 PC 328 where the Privy Council explained further the nature of the powers of punishment possessed by the Legislative Assemblies of the British Colonies in the following words:

> Is the power to punish and commit for contempts committed in its presence are necessary to the existence of such a body as the Assembly of Dominica, and the proper exercise of the functions which it is intended to execute? It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberaties or proper action of a legislative body during its sitting, which last power is necessary for self-preservation. If a Member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another.

[46] As regards to this appeal, it is our judgment that the assembly must act within its constitutional and legal powers before the protection provided for by art. 72(1) can arise, before passing a resolution of an act of contempt having been committed beyond the walls of the Assembly. The Assembly's powers are limited by the Selangor State Constitution. The Selangor State Constitution expressly provides in Article LXXVII as follows:

> The Legislative Assembly shall have the privileges and powers set out in the Schedule thereto.

[47] A careful perusal of the provisions of the schedule in the Selangor State Constitution, which confers the power and privileges of the Assembly, reveal no provision that provides for contempt committed outside the Legislative Assembly. The defendants too have failed to show which provision in the schedule was relied on to pass the resolution. The assembly has therefore exceeded the jurisdiction provided for in the schedule.

[48] We also note in the present case that the standing orders of the Assembly and the Contempt of the House Enactment reveals no provision prescribing for contempt committed beyond the walls of the assembly. In the circumstances, it is our considered view that the resolution prescribing the alleged contempt and to refer the plaintiff to the committee of privileges is unconstitutional, being *ultra vires* the schedule of the Selangor State Constitution and the standing orders of the assembly, made pursuant to art. LXXVII.

[49] We find that the principle laid down in the case of *YAB Dato' Dr Zambry* applies to this case as the factual context of the present case are on all fours with the case of *YAB Dato' Dr Zambry*. The Assembly being in the same position as the Perak Legislative Assembly, and the principle in *Kielley v. Carson* having been accepted in *YAB Dato' Dr Zambry*, that in the absence of express grant, Legislative Assemblies have no power to adjudicate upon, or punish contempt committed beyond their walls, applies with equal force to the present case.

[50] As regards to the cases of *Teng Chang Khim* and *Fan Yew Teng* relied on by the defendants, these cases in our view are distinguishable and irrelevant in the context of its application to the present case. In both the cases the subject matter was within the exclusive jurisdiction of the Legislative Assemblies and concerned internal matters.

[51] In *Fan Yew Teng* the plaintiff had been convicted for sedition. It was resolved by the Dewan Rakyat that the question whether the plaintiff had become disqualified for membership of the Assembly be referred to the committee of privileges. The plaintiff sought declarations to the effect that he had a right to exhaust his legal right to appeal and to petition to the Yang Dipertuan Agong for a pardon before the assembly could make a decision regarding his disqualification. It was held that the decision on the issue of disqualification of membership fell within the exclusive jurisdiction of the Dewan Rakyat by virtue of the then existing art. 53 which states that "If any question arises whether a member of a House of Parliament has become disqualified for membership, the decision of that House shall be taken and shall be final."

[52] In both the cases of *Teng Chang Khim* and *Fan Yew Teng* there was no dispute as to the existence of the privilege. The occasion, manner of the exercise and appropriateness of the exercise of matters concerning the internal affairs of the assembly are clearly within the ambit of the proceedings in the assembly or a committee of the assembly which cannot be questioned by the courts.

Conclusion

[53] For the above stated reasons, we find that there is no merit in the appeal. We answer the first and the second questions posed in this appeal in the affirmative. The third question is answered in the negative. The appeal is therefore dismissed with costs.